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10 Consumer Advocacy Group, Inc.

**ENDORSED FILED**  
**SAN MATEO COUNTY**

FEB 28 2012

Clerk of the Superior Court  
By Rebecca Krill  
DEPUTY CLERK

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN MATEO

**CIV 512114**

13 CONSUMER ADVOCACY GROUP, INC.,  
14 in the public interest,

15 Plaintiff,

16 v.

17 GINA GROUP, LLC, a New York Limited  
18 Liability Company; GINA HOSIERY LTD.,  
19 a New York Corporation; GINA  
20 CONCEPTS, LLC, a New York Limited  
21 Liability Company; and DOES 1-20;

22 Defendants.

CASE NO.

COMPLAINT FOR PENALTY,  
INJUNCTION, AND RESTITUTION

Violation of Proposition 65, the Safe  
Drinking Water and Toxic Enforcement  
Act of 1986 (*Health & Safety Code*, §  
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL  
CASE (exceeds \$25,000)

23 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
24 defendants GINA GROUP, LLC, GINA HOSIERY LTD., GINA CONCEPTS, LLC and DOES  
25 1-20, as follows:

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**THE PARTIES**

1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an organization qualified to do business in the State of California. CAG is a person within the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private attorney general, brings this action in the public interest as defined under Health and Safety Code section 25249.7, subdivision (d).
2. Defendant GINA GROUP, LLC ("GINA GROUP") is a New York limited liability company, doing business in the State of California at all relevant times herein.
3. Defendant GINA HOSIERY LTD. ("GINA HOSIERY") is a New York corporation, doing business in the State of California at all relevant times herein.
4. Defendant GINA CONCEPTS, LLC ("GINA CONCEPTS") is a New York limited liability company, doing business in the State of California at all relevant times herein.
5. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-20, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
6. At all times mentioned herein, the term "Defendants" includes GINA GROUP, LLC, GINA HOSIERY LTD., GINA CONCEPTS, LLC. and Does 1-20.
7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all times mentioned herein have conducted business within the State of California.
8. At all times relevant to this action, each of the Defendants, including Does 1-20, was an agent, servant, or employee of each of the other Defendants. In conducting the activities alleged in this Complaint, each of the Defendants was acting within the course and scope of this agency, service, or employment, and was acting with the consent, permission, and authorization of each of the other Defendants. All actions of each of the Defendants alleged in this Complaint were ratified and approved by every other Defendant or their

1 officers or managing agents. Alternatively, each of the Defendants aided, conspired with  
2 and/or facilitated the alleged wrongful conduct of each of the other Defendants.

3 9. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
4 Defendants was a person doing business within the meaning of Health and Safety Code  
5 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
6 employees at all relevant times.

7 **JURISDICTION**

8 10. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
9 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
10 those given by statute to other trial courts. This Court has jurisdiction over this action  
11 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
12 violations of Proposition 65 in any Court of competent jurisdiction.

13 11. This Court has jurisdiction over Defendants named herein because Defendants either  
14 reside or are located in this State or are foreign corporations authorized to do business in  
15 California, are registered with the California Secretary of State, or who do sufficient  
16 business in California, have sufficient minimum contacts with California, or otherwise  
17 intentionally avail themselves of the markets within California through their manufacture,  
18 distribution, promotion, marketing, or sale of their products within California to render  
19 the exercise of jurisdiction by the California courts permissible under traditional notions  
20 of fair play and substantial justice.

21 12. Venue is proper in the County of San Mateo because one or more of the instances of  
22 wrongful conduct occurred, and continues to occur, in the County of San Mateo and/or  
23 because Defendants conducted, and continue to conduct, business in the County of San  
24 Mateo with respect to the consumer product that is the subject of this action.

25 **BACKGROUND AND PRELIMINARY FACTS**

26 13. In 1986, California voters approved an initiative to address growing concerns about  
27 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to  
28 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,

1 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
2 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
3 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources  
4 from contamination, to allow consumers to make informed choices about the products  
5 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
6 fit.

7 14. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
8 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
9 § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
10 chemicals and chemical families. Proposition 65 imposes warning requirements and  
11 other controls that apply to Proposition 65-listed chemicals.

12 15. All businesses with ten (10) or more employees that operate or sell products in California  
13 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
14 from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
15 water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and  
16 reasonable" warnings before exposing a person, knowingly and intentionally, to a  
17 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

18 16. Proposition 65 provides that any person "violating or threatening to violate" the statute  
19 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
20 "Threaten to violate" means "to create a condition in which there is a substantial  
21 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
22 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
23 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

24 17. Plaintiff identified certain practices of manufacturers and distributors of Di (2-ethylhexyl)  
25 Phthalate ("DEHP")-bearing products of exposing, knowingly and intentionally, persons  
26 in California to the Proposition 65-listed chemicals of such products without first  
27 providing clear and reasonable warnings of such to the exposed persons prior to the time  
28 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

- 1 18. On January 1, 1988, the Governor of California added Di (2-ethylhexyl) Phthalate  
2 (“DEHP”), also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) Phthalate, to  
3 the list of chemicals known to the State to cause cancer, and on October 24, 2003, the  
4 Governor added DEHP to the list of chemicals known to the State to cause developmental  
5 male reproductive toxicity. Pursuant to Health and Safety Code sections 25249.9 and  
6 25249.10, twenty (20) months after addition of DEHP to the list of chemicals known to  
7 the State to cause cancer and reproductive toxicity, DEHP became fully subject to  
8 Proposition 65 warning requirements and discharge prohibitions.
- 9 19. Plaintiff identified certain practices of manufacturers and distributors of Di-*n*-butyl  
10 Phthalate (“DBP”)-bearing products of exposing, knowingly and intentionally, persons in  
11 California to the Proposition 65-listed chemicals of such products without first providing  
12 clear and reasonable warnings of such to the exposed persons prior to the time of  
13 exposure. Plaintiff later discerned that Defendants engaged in such practice.
- 14 20. On December 2, 2005, the Governor added Di-*n*-butyl Phthalate (“DBP”), also known as  
15 Dibutyl Phthalate, to the list of chemicals known to the State to cause developmental  
16 male female reproductive toxicity. Pursuant to Health and Safety Code sections 25249.9  
17 and 25249.10, twenty (20) months after addition of DBP to the list of chemicals known to  
18 the State to cause reproductive toxicity, DBP became fully subject to Proposition 65  
19 warning requirements and discharge prohibitions.

20 **SATISFACTION OF PRIOR NOTICE**

- 21 21. On or about May 26, 2011, Plaintiff gave notice of alleged violations of Health and  
22 Safety Code section 25249.6, concerning consumer products exposures subject to a  
23 private action to Defendants and to the California Attorney General, County District  
24 Attorneys, and City Attorneys for each city containing a population of at least 750,000  
25 people in whose jurisdictions the violations allegedly occurred, concerning the products  
26 Pink Girls Jelly Flip Flops, Style # ZTG-4501/A, Yellow Girls Jelly Flip Flops, Style #  
27 ZTG-4501/A, and Blue Chatties® Sole Searching™ Flip Flops, Style # ZTG-4702/A.

- 1 22. On or about August 5, 2011, Plaintiff gave notice of alleged violations of Health and  
2 Safety Code section 25249.6, concerning consumer products exposures subject to a  
3 private action to GINA GROUP and to the California Attorney General, County District  
4 Attorneys, and City Attorneys for each city containing a population of at least 750,000  
5 people in whose jurisdictions the violations allegedly occurred, concerning the product  
6 Chatties® Sandals "M 7-8" Style # ZTL-2600/A.
- 7 23. Before sending the notices of alleged violation, Plaintiff investigated the consumer  
8 products involved, the likelihood that such products would cause users to suffer  
9 significant exposures to DEHP and DBP, and the corporate structure of each of the  
10 Defendants.
- 11 24. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
12 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
13 Plaintiff who executed the certificate had consulted with at least one person with relevant  
14 and appropriate expertise who reviewed data regarding the exposures to DEHP and DBP,  
15 which is the subject of the Proposition 65-listed chemicals of this action. Based on that  
16 information, the attorney for Plaintiff who executed the Certificate of Merit believed  
17 there was a reasonable and meritorious case for this private action. The attorney for  
18 Plaintiff attached to the Certificate of Merit served on the Attorney General the  
19 confidential factual information sufficient to establish the basis of the Certificate of  
20 Merit.
- 21 25. Plaintiff's notice of alleged violations also included a Certificate of Service and a  
22 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
23 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).
- 24 26. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
25 gave notices of the alleged violations to Defendants, and the public prosecutors  
26 referenced in Paragraphs 21 and 22.
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1 27. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
2 any applicable district attorney or city attorney has commenced and is diligently  
3 prosecuting an action against the Defendants.

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5 **FIRST CAUSE OF ACTION**

6 **(By Consumer Advocacy Group, Inc. and against GINA GROUP, GINA HOSIERY, GINA  
7 CONCEPTS and Does 1-20 for Violations of Proposition 65, The Safe Drinking Water and  
8 Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

9 **Pink Girls Jelly Flip Flops, Style # ZTG-4501/A**

10 28. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
11 paragraphs 1 through 27 of this complaint as though fully set forth herein.

12 29. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
13 distributor, promoter, or retailer of Pink Girls Jelly Flip Flops, Style # ZTG-4501/A  
14 (hereinafter "Pink Flip Flops"), a consumer product designed as children's footwear.

15 30. Plaintiff is informed, believes, and thereon alleges that the Pink Flip Flops contain DEHP  
16 and DBP.

17 31. Defendants knew or should have known that DEHP and DBP have been identified by the  
18 State of California as chemical known to cause cancer and reproductive toxicity and  
19 therefore were subject to Proposition 65 warning requirements. Defendants were also  
20 informed of the presence of DEHP and DBP in Pink Flip Flops within Plaintiff's notice of  
21 alleged violations further discussed above at Paragraph 21.

22 32. Plaintiff's allegations regarding Pink Flip Flops concern "[c]onsumer products  
23 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
24 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
25 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*  
26 *25602(b)*. Pink Flip Flops is a consumer product, and, as mentioned herein, exposures to  
27 DEHP and DBP took place as a result of such normal and foreseeable consumption and  
28 use.

- 1 33. Plaintiff is informed, believes, and thereon alleges that between May 25, 2008 and the  
2 present, each of the Defendants knowingly and intentionally exposed California  
3 consumers and users of Pink Flip Flops, which Defendants manufactured, distributed, or  
4 sold as mentioned above, to DEHP and DBP, without first providing any type of clear  
5 and reasonable warning of such to the exposed persons before the time of exposure.  
6 Defendants have distributed and sold Pink Flip Flops in California. Defendants know  
7 and intend that California consumers will use and consume Pink Flip Flops thereby  
8 exposing them to DEHP and DBP. Defendants thereby violated Proposition 65.
- 9 34. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
10 Persons sustain exposures by handling Pink Flip Flops without wearing gloves or any  
11 other personal protective equipment, or by touching bare skin or mucous membranes with  
12 gloves after handling Pink Flip Flops, as well as through hand to mouth contact, hand to  
13 mucous membrane, or breathing in particulate matter dispersed from Pink Flip Flops.
- 14 35. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
15 Proposition 65 as to Pink Flip Flops have been ongoing and continuous to the date of the  
16 signing of this complaint, as Defendants engaged and continue to engage in conduct  
17 which violates Health and Safety Code section 25249.6, including the manufacture,  
18 distribution, promotion, and sale of Pink Flip Flops, so that a separate and distinct  
19 violation of Proposition 65 occurred each and every time a person was exposed to DEHP  
20 and DBP by Pink Flip Flops as mentioned herein.
- 21 36. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
22 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
23 violations alleged herein will continue to occur into the future.
- 24 37. Based on the allegations herein, Defendants are liable for civil penalties of up to  
25 \$2,500.00 per day per individual exposure to DEHP and DBP from Pink Flip Flops,  
26 pursuant to Health and Safety Code section 25249.7(b).
- 27 38. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
28 filing this Complaint.

1 SECOND CAUSE OF ACTION

2 (By Consumer Advocacy Group, Inc. and against GINA GROUP, GINA HOSIERY, GINA  
3 CONCEPTS and Does 1-20 for Violations of Proposition 65, The Safe Drinking Water and  
4 Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

5 **Yellow Girls Jelly Flip Flops, Style # ZTG-4501/A**

6 39. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
7 paragraphs 1 through 38 of this complaint as though fully set forth herein.

8 40. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
9 distributor, promoter, or retailer of Yellow Girls Jelly Flip Flops, Style # ZTG-4501/A  
(hereinafter "Yellow Flip Flops"), a consumer product designed as children's footwear.

10 41. Plaintiff is informed, believes, and thereon alleges that the Yellow Flip Flops contain  
11 DEHP and DBP.

12 42. Defendants knew or should have known that DEHP and DBP have been identified by the  
13 State of California as chemical known to cause cancer and reproductive toxicity and  
14 therefore were subject to Proposition 65 warning requirements. Defendants were also  
15 informed of the presence of DEHP and DBP in Yellow Flip Flops within Plaintiff's notice  
16 of alleged violations further discussed above at Paragraph 21.

17 43. Plaintiff's allegations regarding Yellow Flip Flops concern "[c]onsumer products  
18 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
19 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
20 exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, §  
21 25602(b). Yellow Flip Flops is a consumer product, and, as mentioned herein, exposures  
22 to DEHP and DBP took place as a result of such normal and foreseeable consumption  
23 and use.

24 44. Plaintiff is informed, believes, and thereon alleges that between May 25, 2008 and the  
25 present, each of the Defendants knowingly and intentionally exposed California  
26 consumers and users of Yellow Flip Flops, which Defendants manufactured, distributed,  
27 or sold as mentioned above, to DEHP and DBP, without first providing any type of clear  
28 and reasonable warning of such to the exposed persons before the time of exposure.

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Defendants have distributed and sold Yellow Flip Flops in California. Defendants know and intend that California consumers will use and consume Yellow Flip Flops thereby exposing them to DEHP and DBP. Defendants thereby violated Proposition 65.

45. The principal routes of exposure are through dermal contact, ingestion and inhalation. Persons sustain exposures by handling Yellow Flip Flops without wearing gloves or any other personal protective equipment, or by touching bare skin or mucous membranes with gloves after handling Yellow Flip Flops, as well as through hand to mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed from Yellow Flip Flops.

46. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of Proposition 65 as to Yellow Flip Flops have been ongoing and continuous to the date of the signing of this complaint, as Defendants engaged and continue to engage in conduct which violates Health and Safety Code section 25249.6, including the manufacture, distribution, promotion, and sale of Yellow Flip Flops, so that a separate and distinct violation of Proposition 65 occurred each and every time a person was exposed to DEHP and DBP by Yellow Flip Flops as mentioned herein.

47. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that the violations alleged herein will continue to occur into the future.

48. Based on the allegations herein, Defendants are liable for civil penalties of up to \$2,500.00 per day per individual exposure to DEHP and DBP from Yellow Flip Flops, pursuant to Health and Safety Code section 25249.7(b).

49. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to filing this Complaint.

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1 **THIRD CAUSE OF ACTION**

2 (By Consumer Advocacy Group, Inc. and against GINA GROUP, GINA HOSIERY, GINA  
3 CONCEPTS and Does 1-20 for Violations of Proposition 65, The Safe Drinking Water and  
4 Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

5 **Blue Chatties® Sole Searching™ Flip Flops, Style # ZTG-4702/A**

6 50. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
7 paragraphs 1 through 49 of this complaint as though fully set forth herein.

8 51. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
9 distributor, promoter, or retailer of Blue Chatties® Sole Searching™ Flip Flops, Style #  
10 ZTG-4702/A (hereinafter "Blue Chatties Flip Flops"), a consumer product designed as  
11 children's footwear.

12 52. Plaintiff is informed, believes, and thereon alleges that the Blue Chatties Flip Flops  
13 contain DEHP and DBP.

14 53. Defendants knew or should have known that DEHP and DBP have been identified by the  
15 State of California as chemical known to cause cancer and reproductive toxicity and  
16 therefore were subject to Proposition 65 warning requirements. Defendants were also  
17 informed of the presence of DEHP and DBP in Blue Chatties Flip Flops within Plaintiff's  
18 notice of alleged violations further discussed above at Paragraph 21.

19 54. Plaintiff's allegations regarding Blue Chatties Flip Flops concern "[c]onsumer products  
20 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
21 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
22 exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, §  
23 25602(b). Blue Chatties Flip Flops is a consumer product, and, as mentioned herein,  
24 exposures to DEHP and DBP took place as a result of such normal and foreseeable  
25 consumption and use.

26 55. Plaintiff is informed, believes, and thereon alleges that between May 25, 2008 and the  
27 present, each of the Defendants knowingly and intentionally exposed California  
28 consumers and users of Blue Chatties Flip Flops, which Defendants manufactured,  
distributed, or sold as mentioned above, to DEHP and DBP, without first providing any

1 type of clear and reasonable warning of such to the exposed persons before the time of  
2 exposure. Defendants have distributed and sold Blue Chatties Flip Flops in California.  
3 Defendants know and intend that California consumers will use and consume Blue  
4 Chatties Flip Flops thereby exposing them to DEHP and DBP. Defendants thereby  
5 violated Proposition 65.

6 56. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
7 Persons sustain exposures by handling Blue Chatties Flip Flops without wearing gloves  
8 or any other personal protective equipment, or by touching bare skin or mucous  
9 membranes with gloves after handling Blue Chatties Flip Flops, as well as through hand  
10 to mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed  
11 from Blue Chatties Flip Flops.

12 57. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
13 Proposition 65 as to Blue Chatties Flip Flops have been ongoing and continuous to the  
14 date of the signing of this complaint, as Defendants engaged and continue to engage in  
15 conduct which violates Health and Safety Code section 25249.6, including the  
16 manufacture, distribution, promotion, and sale of Blue Chatties Flip Flops, so that a  
17 separate and distinct violation of Proposition 65 occurred each and every time a person  
18 was exposed to DEHP and DBP by Blue Chatties Flip Flops as mentioned herein.

19 58. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
20 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
21 violations alleged herein will continue to occur into the future.

22 59. Based on the allegations herein, Defendants are liable for civil penalties of up to  
23 \$2,500.00 per day per individual exposure to DEHP and DBP from Blue Chatties Flip  
24 Flops, pursuant to Health and Safety Code section 25249.7(b).

25 60. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
26 filing this Complaint.

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1 **FOURTH CAUSE OF ACTION**

2 **(By Consumer Advocacy Group, Inc. and against GINA GROUP, GINA HOSIERY, GINA**  
3 **CONCEPTS and Does 1-20 for Violations of Proposition 65, The Safe Drinking Water and**  
4 **Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

5 **Chatties® Sandals “M 7-8” Style # ZTL-2600/A**

6 61. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
7 paragraphs 1 through 60 of this complaint as though fully set forth herein.

8 62. Each of the defendants, GINA GROUP and Does 1-20, is, and at all times mentioned  
9 herein was, a manufacturer, distributor, promoter, or retailer of Chatties® Sandals “M 7-  
10 8” Style # ZTL-2600/A (hereinafter “Chatties Sandals”), a consumer product designed as  
11 footwear.

12 63. Plaintiff is informed, believes, and thereon alleges that the Chatties Sandals contain DBP.

13 64. Defendants, GINA GROUP and Does 1-20, knew or should have known that DBP has  
14 been identified by the State of California as chemical known to cause reproductive  
15 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants,  
16 GINA GROUP and Does 1-20, were also informed of the presence of DBP in Chatties  
17 Sandals within Plaintiff's notice of alleged violations further discussed above at  
18 Paragraph 22.

19 65. Plaintiff's allegations regarding Chatties Sandals concern “[c]onsumer products  
20 exposure[s],” which “is an exposure that results from a person's acquisition, purchase,  
21 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
22 exposure that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, §  
23 25602(b). Chatties Sandals is a consumer product, and, as mentioned herein, exposures  
24 to DBP took place as a result of such normal and foreseeable consumption and use.

25 66. Plaintiff is informed, believes, and thereon alleges that between August 2, 2008 and the  
26 present, each of the defendants, GINA GROUP and Does 1-20, knowingly and  
27 intentionally exposed California consumers and users of Chatties Sandals, which  
28 Defendants GINA GROUP and Does 1-02 manufactured, distributed, or sold as  
mentioned above, to DBP, without first providing any type of clear and reasonable

1 warning of such to the exposed persons before the time of exposure. Defendants, GINA  
2 GROUP and Does 1-20, have distributed and sold Chatties Sandals in California.  
3 Defendants, GINA GROUP and Does 1-20, know and intend that California consumers  
4 will use and consume Chatties Sandals thereby exposing them to DBP. Defendants,  
5 GINA GROUP and Does 1-20, thereby violated Proposition 65.

6 67. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
7 Persons sustain exposures by handling Chatties Sandals without wearing gloves or any  
8 other personal protective equipment, or by touching bare skin or mucous membranes with  
9 gloves after handling Chatties Sandals, as well as through hand to mouth contact, hand to  
10 mucous membrane, or breathing in particulate matter dispersed from Chatties Sandals.

11 68. Plaintiff is informed, believes, and thereon alleges that each of defendants' violations of  
12 Proposition 65 as to Chatties Sandals have been ongoing and continuous to the date of the  
13 signing of this complaint, as defendants GINA GROUP and Does 1-20 engaged and  
14 continue to engage in conduct which violates Health and Safety Code section 25249.6,  
15 including the manufacture, distribution, promotion, and sale of Chatties Sandals, so that a  
16 separate and distinct violation of Proposition 65 occurred each and every time a person  
17 was exposed to DBP by Chatties Sandals as mentioned herein.

18 69. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
19 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
20 violations alleged herein will continue to occur into the future.

21 70. Based on the allegations herein, defendants, GINA GROUP and Does 1-20, are liable for  
22 civil penalties of up to \$2,500.00 per day per individual exposure to DBP from Chatties  
23 Sandals, pursuant to Health and Safety Code section 25249.7(b).

24 71. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
25 filing this Complaint.

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**PRAYER FOR RELIEF**

Plaintiff demands against each of the Defendants as follows:

1. A permanent injunction mandating Proposition 65-compliant warnings;
2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
3. Costs of suit;
4. Reasonable attorney fees and costs; and
5. Any further relief that the court may deem just and equitable.

Dated: 2/20, 2012

YEROUSHALMI & ASSOCIATES

BY: 

Reuben Yeroushalmi  
Attorneys for Plaintiff,  
Consumer Advocacy Group, Inc.